STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-441

August 4, 2000

MAINE PUBLIC SERVICE COMPANY
Special Contract for McCain Foods, Inc.

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We approve a special rate contract between Maine Public Service Company (MPS) and McCain Foods, Inc. (McCain).

II. BACKGROUND

On May 19, 2000, MPS filed for approval pursuant to 35-A M.R.S.A. § 703(3), a Power Purchase and Customer Service Agreement (the Agreement) between MPS and McCain. The Agreement pertains principally to food processing and associated waste water treatment facilities operated by McCain in Easton, Maine. The Easton facilities are presently being served under a special contract approved by the Commission in Docket No. 96-801. In 1999, the Easton facilities accounted for sales of approximately 38,924,000 kWh. Because of expansion now underway at these facilities, MPS estimates that total annual usage could go as high as 60,500,000 kWh by year-end 2000.

The term of the Agreement is 11 years. During the first eight years of the Agreement, McCain agrees not to self-generate or otherwise bypass MPS's delivery system. As long as McCain remains on the MPS grid, McCain will pay for delivery service in accordance with the full applicable MPUC or FERC rate schedule for delivery service. All stranded cost recovery from McCain's Easton facilities, however, will be limited to $5,200,000 regardless of McCain's actual usage at the Easton facilities or the stranded costs as contained in MPS's rate schedules. McCain will pay stranded costs at its other existing facilities in accordance with the charges set forth in the applicable rate schedules, except that stranded costs for the Washburn and Tatermeal facility will be limited to the level applicable under 1999 usage levels. In addition, McCain will pay no stranded costs for any future facilities. If McCain should self-generate or otherwise bypass the MPS system during the first eight years of the Agreement, the Agreement terminates and McCain will be required to pay a liquidated damage charge equal to the difference between the amount McCain paid MPS during the effective term of the Agreement and the amount McCain would have paid MPS during the same period had the Agreement not been in effect.

In its filing, MPS explains that it entered into the Agreement to eliminate the risk that McCain will cease purchasing electric power through the MPS delivery system.

MPS believes that McCain has a realistic alternative means of procuring electricity from other than the MPS delivery system. Because the Easton facilities of McCain constitute MPS's largest single customer, accounting for approximately 8% of its 1999 sales, MPS finds that loss of the McCain Easton load would present a significant hardship to MPS and its ratepayers. By the Agreement, MPS states that it has guaranteed a level of stranded costs recovery from the Easton facility even if the facility ceases operation during the term of the Agreement. In addition to the guaranteed stranded cost recovery, if McCain self-generates or bypasses the MPS grid, McCain would have to pay as a liquidated damage the benefit it otherwise received by purchasing electricity pursuant to the Agreement rather than the retail rate schedules.

MPS points out in its filing that the Agreement requires the Commission approval of the Agreement to contain "an express determination that the Company shall be permitted to include in its rates … and shall not be required to write off against earnings, or otherwise allocate to its shareholders," the difference in stranded investment collected as a result of this Agreement and the stranded investment that would have been collected from McCain if McCain had taken power from MPS under the applicable rate schedules.

After notice and opportunity to intervene was published, the OPA and Munster Wind Hydro petitioned to intervene. The OPA's petition was granted. On behalf of Munster Wind Hydro, Frederick J. Munster, Jr. stated that as a seller of renewable energy systems in MPS's service territory, special rate contracts to defer self-generation were contrary to the business interests of Munster Wind Hydro. Mr. Munster further stated that special rate contracts for McCain and Huber should be allowed only if the Commission allowed the nameplate capacity for net billing-energy systems to increase from 100 kW to 750 kW.

Counsel for MPS objected to the petition to intervene on behalf of Munster Wind Hydro, on the grounds that the petitioner lacked legal standing to intervene, as a competitor to special contracts, and that the issues raised by Mr. Munster were beyond the scope of the proceeding. The Examiner deferred ruling on Munster's petition.[1] We agree with MPS that, as a competitive business interest, Munster lacks the legal standing to require mandatory intervention pursuant to Chapter 110, section 720. We decline to grant his petition on a discretionary basis under chapter 110, section 721, because the issues he raises are not relevant to this proceeding.

Two technical conferences were held in June. The parties agree that the record in this case consists of MPS's filing, the transcripts from the technical conference, all responses to data requests, and the bench analysis of the advisors.

[1]Although Mr. Munster received notice of the conferences in this case, he did not attend.

III. DECISION

In support of the economic attractiveness of McCain's self-generation option, MPS submitted a May 2000 cogeneration study prepared by McCain's consultant, Richard Silkman, which relies in part on Dr. Silkman's 1999 cogeneration study. We and our advisors (who in this case include outside economic and engineering consultants) have reviewed the Silkman study. In reviewing it, our advisors report that the assumptions and methodology used by Dr. Silkman appear to be reasonable. Moreover, the advisors agree with Dr. Silkman that his analysis contains a major conservative assumption which tends to undervalue the economics of the self-generation option. Dr. Silkman's analysis evaluates the installation of a cogeneration system amortized over a 12-year period, but assumes no value attributed to the salvage or the continued operation of the cogeneration system beyond those 12 years. The advisors agree with Dr. Silkman's conclusion that the cogeneration system is likely to have substantial value after year 12, and that his assumption of no salvage value would therefore make the self-generation option even more economic than his study concludes. We agree with our advisors and find that the Silkman study describes a credible self-generation option that is available to McCain.

Thus, we find it is reasonable for MPS to offer a discount from MPS's rate schedules in order to persuade McCain to defer installing a cogeneration system. In granting a special rate contract, we require the utility to minimize the discount that is reasonably necessary to convince the customer to defer the self-generation option. In evaluating the degree of rate discounting that is necessary, we are aware that energy users are typically willing to pay a premium for the convenience and flexibility of buying power from the electric grid rather than developing and operating self-generation. Generally, electricity consumers prefer to focus their capital and management resources upon their core activities, and can view self-generation as an unwanted distraction.

In this case, McCain Foods is a large firm with substantial economic and technical resources. Constructing and operating a cogeneration system appear to be well within McCain's capabilities, reducing the value of a premium for the convenience of buying power rather than self-generating. Moreover, a large expansion is underway at the Easton facility. As McCain is already undertaking a large scale construction and modification to its facility, the incremental cost of installing cogeneration is likely less than it would be at other times. With these observations in mind, and having reviewed the economics of McCain's cogeneration alternative as stated in Dr. Silkman's study,[2] we find that MPS has reasonably maximized the stranded costs contribution that should be expected from McCain given McCain's viable self generation options.

As described above, Article V of the Agreement requires the Commission to determine that MPS acted reasonably, and to permit MPS to recover in rates the

[2]Dr. Silkman's analysis is subject to a protective order. We note that the Agreement provides MPS with a substantial premium over Dr. Silkman's estimated cost of a cogeneration system.

difference between the revenue collected pursuant to the special contract and the revenue that would have been collected had McCain taken service under the applicable rate schedules. During the course of the proceeding, MPS clarified that the Company did not expect a rate change as part of this proceeding but did require an accounting order to defer the impact of the Agreement until the next rate change. We have already found that MPS's actions in reaching this Agreement were reasonable. This Order shall also serve as an accounting order that authorizes MPS to record, beginning on the effective date of the Agreement, the difference between the level of stranded investment under the McCain contract we approve today and the level of stranded investment that MPS currently is recovering from McCain in rates,[3] on its books of account as a regulatory asset.

We also note that Article V, Paragraph (c) of the Agreement provides that the Agreement is null and void if Commission approval is not received by July 1, 2000. By various written and verbal statements communicated to the Hearing Examiner in this case, counsel for McCain and MPS have agreed that the deadline within Paragraph (c) is extended to at least August 4, 2000. We also note that Article V, Paragraph (d) makes the Agreement effective July 1, 2000 even if Commission approval is granted after July 1, 2000.

Accordingly, the Power Purchase and Customer Service Agreement between Maine Public Service Company and McCain Foods, Inc. dated April 28, 2000 is approved.

Dated at Augusta, Maine, this 4th day of August, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

THIS ORDER HAS BEEN DESIGNATED FOR PUBLICATION

[3] As the rates that were set in Docket 98-577 assumed some discount off the standard rate schedules for McCain, it is not proper for MPS to defer the difference between the new discount contract and the applicable standard rate schedules.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.